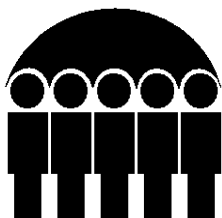


Revised August 26, 2003

Employees' Manual
Title 21
Chapter A

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION



Iowa
Department
of
Human Services

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OVERVIEW

State and federal legislation mandate the Iowa Department of Human Services to conduct its personnel program in a non-discriminatory manner. Laws prohibiting discrimination are numerous, with varying degrees and levels of enforcement to ensure compliance.

The Department has made special effort to incorporate equal employment opportunities and affirmative action goals into its personnel policies and practices. Staff directing day-to-day employment practices have the resources and the responsibility for ensuring that these policies and practices are followed.

This chapter lists the policies that have been established to assist staff in meeting non-discriminatory employment practice requirements.

Civil Rights Legislation

The legislation listed below applies to the Department and covers all aspects of its personnel program:

- ◆ Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination in the provision of services based upon race, color, or national origin.
- ◆ Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment to persons based on race, color, religion, sex, or national origin.
- ◆ Section 504 of the Rehabilitation Act of 1963 and the Americans with Disabilities Act of 1990, as amended, prohibits discrimination in employment practices and in the provision of services to persons based on a mental or physical disability. (This includes recovering alcohol and substance abusers.)
- ◆ Americans With Disabilities Act of 1990, as amended, this act prohibits discrimination against persons with disabilities in all programs, activities and services provided or made available by state and local governments, regardless of whether those entities receive federal assistance.
- ◆ Age Discrimination Act of 1967 prohibits discrimination in employment to persons between the ages of 40 and 70.
- ◆ Fair Labor Standards – Equal Pay Act of 1963 prohibits employers, on the basis of sex, from paying wages “at a rate less than the rate at which wages are paid to employees of the opposite sex... for equal work on jobs ... and which are performed under similar working conditions.”

- ◆ Title IX of the Educational Amendments of 1972 prohibits discrimination on the basis of sex in all federally assisted education programs. It applies to both students and employees.
- ◆ Iowa Civil Rights Act of 1965, as amended, prohibits discrimination in employment to persons on the basis of their race, creed, color, national origin, sex, disability or age (age includes anyone over the age of 18).
- ◆ Iowa Executive Order #15, 1973, requires each state agency to conduct its business without discrimination, and to develop and implement an affirmative action plan.

Definitions

“Affirmative action” is a process that consists of specific results-oriented procedures designed to effect change.

“Affirmative action plan” represents an agency’s commitment to ensure equal employment opportunity in all aspects of its operation affecting employees and applicants for employment. It is a planned management program which, to be effective, must have the support and commitment of all levels of staff. It includes an identification of:

- ◆ The agency’s specific equal employment opportunity problems,
- ◆ The necessary action steps designed to correct these problems, and
- ◆ Action steps required to remedy past discrimination.

The effectiveness of the plan is measured by the results it actually achieves, rather than by its intended results.

“Bona fide occupational qualification doctrine” is a statutory exception to what might otherwise be an unlawful employment practice. Section 703(e) of Title VII of the Civil Rights Act provides an exception for employer actions “in those certain instances where religion, sex, or national origin is a bona fide occupation qualification reasonably necessary to the normal operation of the business or enterprise.”

“Discrimination” is an act or actions whose effects are adverse to the opportunities of one or more persons because of a legal protected class basis (race, color, sex, religion, disability, etc.) which under particular federal and state antidiscrimination laws are unlawful. Unlawful discrimination may be either intentional or unintentional adverse actions.

“Discrimination complaint” means a person’s complaint about the conduct, behavior or adverse actions of another person at DHS and belief that the behavior was related to the complainant’s age, race, skin color, creed, national origin, religion, sex/gender, sexual orientation, physical or mental disability, political beliefs or marital status.

“Equal employment opportunity (EEO)” is the right of all persons to apply and be evaluated for job opportunities without regard to their race, color, sex, national origin, religion, age, and mental or physical disability.

“Essential job functions” are defined as critical responsibilities of the position which must be performed with or without a reasonable accommodation.

“Goals and timetables” are numerical projections an employer makes of the representation minorities, women and persons with a disability are likely to achieve in positions in which they have been underutilized through affirmative action efforts.

“Has a record of such an impairment” means that a person has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment” means a person who meets one of the following:

- ◆ The person has a physical or mental impairment that does not substantially limit major life activities but that is treated by a person as constituting such a limitation;
- ◆ The person has a physical or mental impairment that substantially limits the major life activities only as a result of the attitudes of others toward such impairment; or
- ◆ Has none of the impairments defined but is treated as having such an impairment.

“Major life activities” is caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working as defined in Section 504.

“Minority” means a person who possesses characteristics of a minority racial or ethnic group identification. Examples of minorities are:

- ◆ Black/African-American not of Hispanic Origin
- ◆ American Indian or Alaskan Native
- ◆ Asian or Pacific Islander
- ◆ Hispanic/Latino

“Person with disability (handicapped)” as defined under Americans with Disabilities Act (ADA) of 1990, as amended, means anyone who:

- ◆ Has a physical or mental impairment that substantially limits one or more major life activities;
- ◆ Has a record of such an impairment; or
- ◆ Is regarded as having such an impairment.

“Physical or mental impairment” is defined by Section 504 as one of the following:

- ◆ Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 - Neurological
 - Musculoskeletal
 - Special sense organs
 - Respiratory, including speech organs
 - Cardiovascular
 - Reproductive
 - Digestive
 - Genitourinary
 - Hemis and lymphatic
 - Skin
 - Endocrine
- ◆ Any mental or psychological disorder, such as mental retardation, organic brain damage, emotional or mental illness, and specific learning disabilities.

“Protected classes” refers to minority groups whose members have been subjected to large-scale employment discrimination in the past. Title VII, however, protects any person who is discriminated against because of his/her race, color, religion, sex or national origin. Currently a person of a protected class would include anyone specifically covered under any civil rights legislation. (See **Civil Rights Legislation**.)

“Qualitative efforts” means improvements within the workforce which are non numerical and designed to meet targeted Affirmative Action goals. These efforts are designed to enhance an environment towards welcoming and inclusive settings within the workforce.

“Qualified handicapped person” is when a person, with or without reasonable accommodations, can perform the essential functions of the job performed.

“Quantitative efforts” means the numerical make up of minorities, women, or persons with disability in a particular job category.

“Reasonable accommodation” requires an employer or service provider to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee, unless the employer or service provider can demonstrate that the accommodation would impose an undue hardship on the operation of its entity.

Reasonable accommodation is mandated by Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990. Examples of accommodations include, but are not limited to:

- ◆ Making facilities accessible to persons with a disability
- ◆ Position restructuring
- ◆ Modified work schedule
- ◆ Acquisition or modification of equipment or devices
- ◆ Modification of examinations and elimination of barriers
- ◆ Readers for blind-visually impaired persons
- ◆ Interpretation for deaf persons

“Retaliation” occurs when a person feels that the person’s complaint or opposition to a discriminatory practice has resulted in some form of adverse action.

“Underutilization” means having fewer minorities, women, or people with a disability represented in a particular occupational category within an employer’s workforce as compared to the availability in the relevant labor force.

EQUAL EMPLOYMENT OPPORTUNITY

Legal reference: Title VII of the Civil Rights Act of 1964, as amended.

The philosophy of the Department is to preserve and promote the human dignity of the individual. Employment practices are no less a consideration in the process than providing services to clients.

This policy of nondiscrimination for any reason of race, color, creed, national origin, sex, age, religious or political affiliation, and mental or physical disability, applies to all aspects of the Department’s workforce and services, including sexual and racial harassment. Non-discriminatory employment practices are mandated by federal and state legislation as well as by this policy.

Supervisors shall provide fair and equal treatment to all applicants and employees in their employment practices. Failure to do so shall be subject to disciplinary action, up to and including discharge.

Posting of the Nondiscrimination Policy Statement

The Diversity Program Unit will provide a poster detailing the Department's commitment to affirmative action and equal employment opportunity. The poster shall be updated as necessary and include on it the names of people who may be contacted if an applicant or employee feels he or she has been the object of discrimination.

The "Nondiscrimination Policy Statement" poster shall be posted in each division, county, and institution in a site that is:

- ◆ Visible to the public, and
- ◆ Used for employment interviewing purposes.

Minimally, it will be posted as defined by this policy. In larger institutions or areas, other signs should be posted at sites where Department information is shared with employees.

Sexual Harassment

Legal reference: Title VII of the Civil Rights Act of 1964; Guidelines effective April 11, 1980

Physical or verbal sexual harassment of a Department employee by any other Department employee is prohibited. Any violation of this policy shall be subject to disciplinary action, up to and including discharge.

Federal guidelines governing sexual harassment establish three basic criteria to determine if an act, including sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, constitutes unlawful sexual harassment in violation of Title VII. The guidelines are as follows:

- ◆ Whether submission to the conduct is either an explicit or implicit term or condition of employment.
- ◆ Whether submission to or rejection of the conduct is used as the basis for an employment decision affecting the employee rejecting or submitting to the conduct.
- ◆ Whether the conduct has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating, hostile or offensive work environment.

An employee may file a sexual harassment complaint, within the established time limits, by using one or more of the following procedures:

- ◆ Department's discrimination grievance procedure. (See 1-D, **DISCRIMINATION COMPLAINTS**.)
- ◆ Human Resource Enterprise appeals procedure. (See *STATE OF IOWA EMPLOYEE HANDBOOK: Anti-Discrimination Policy Summary*); at <http://www.state.ia.us/government/idop/pdfs/EmployeeHandbook.pdf>.
- ◆ Collective bargaining contract grievance procedure. (See the applicable contract.)
- ◆ Iowa Civil Rights Commission. (See 161 Iowa Administrative Code Chapter 3.)

Employees are encouraged to contact the Diversity Program Unit, for assistance and consultation before filing a formal complaint. Inquiries to the Diversity Program Unit will be held in confidence.

In those instances when the alleged harassment is being promulgated by the immediate supervisor or hiring authority, the first or second step of the Department's discrimination grievance procedure, or both, may be omitted. (See 1-D, **DISCRIMINATION COMPLAINTS**.)

AFFIRMATIVE ACTION

Legal reference: Iowa Executive Order #15, 1973

DHS as a department is required to fulfill the state's affirmative action guidelines. These guidelines include formulating targeted goals within timetables to meet (underutilization) quantitative numbers and qualitative environmental improvements within the workforce. (See

Definitions: "Quantitative" and "Qualitative.")

The diversity manager has a role of:

- ◆ Providing direction and efforts to improve the work environment and bring awareness, acceptance, and understanding of the cultural, social, and economic differences within the workforce.
- ◆ Ensuring progress in meeting affirmative action goals and timetables.

Affirmative Action Plan

The Department's Affirmative Action Plan is a set of specific procedures that cover all phases of the employment process. Its purpose is to eliminate discrimination and underutilization of protected class persons and to facilitate the accomplishment of equal employment opportunity goals and objectives. (See XXI-A-Appendix.)

All affected employees shall adhere to the Affirmative Action Plan. The Affirmative Action Plan is distributed to division administrators, superintendents, service area managers, personnel business managers, and affirmative action committee members. They will be responsible for making it available to any employee upon request. Copies of the Affirmative Action Plan may be obtained from any of these individuals or by contacting the Diversity Program Unit.

Affirmative Action Committees

An affirmative action committee will be appointed in the service areas, institutions and central office as deemed appropriate and necessary, based on meeting the overall needs of the Department's Affirmative Action Plan.

Full-time affirmative action/compliance officers are located only in central office. To meet the need for contact persons in the field who have knowledge of the Affirmative Action Plan and current policies and practices, the committee concept was created.

Committee representation shall include line and management employees in proportion to the size of the employee population at that institution, service area, or central office.

Committees shall have no fewer than two members. If there are insufficient volunteers, appointment to committees will be made by the division administrator, superintendent, service area manager or diversity manager.

Committees shall meet at least twice a year (semiannually) and shall submit written minutes of each meeting to the Diversity Program Unit.

Annual Review of Plan

The Diversity Program Unit reviews and updates the Department's Affirmative Action Plan annually to ensure that its policies and procedures are providing the mechanisms to assist staff in meeting their responsibility of equal employment opportunity within the Department. The evaluation includes:

- ◆ A report prepared by the Diversity Program Unit on the effectiveness of each division, service area, and institution in meeting the hiring and promotion goals of women and minorities.
- ◆ Any proposed revisions to the existing Affirmative Action Plan.

As with any program, review and evaluation of the plan's effectiveness and efficiency must be an integral component to continuation. In a program to ensure equal employment opportunity, yearly evaluation of its effectiveness is critical. Changing needs of the employers, shifts in the population, and problems of implementation are some of the considerations that are reviewed each year.

If a policy of affirmative action is to work, yearly reaffirmation by management of its goals is also essential.

Affirmative action committee members shall review the report for additional progressive assessment that may increase the plan's overall effectiveness. The Diversity Program Unit will comment on the proposals and make any additional recommendations that would increase the plans overall effectiveness.

A copy of the report will be sent to the Department's director and the Department of Administrative Services-Human Resource Enterprise.

Progress on Affirmative Action Goals

The diversity manager is responsible for submitting reports and progress of affirmative action goals, signed by the Department director, to the Department of Administrative Services-Human Resource Enterprise. Affirmative action committees provide input to the diversity manager as well as ongoing activity efforts towards the DHS affirmative action compliance goals.

The Diversity Program Unit will make available to the Department director and management staff all such affirmative action documentation upon request.

CIVIL RIGHTS COMPLAINTS

Legal reference: Title VI and Title VII of the Civil Rights Act of 1964, as amended

Civil rights complaints may be filed with the Department's Diversity Program Unit, the Iowa Civil Rights Commission, the Equal Employment Opportunity Commission, the Department of Justice, and the Department of Health, Education and Welfare's Office of Civil Rights.

The employing unit shall forward copies of all civil rights complaints, decisions, or closures involving the Department to the Diversity Program Unit within five days of receipt. Share complaint information only with those who need to know. Adhere to all confidentiality standards.

Complaint Response

Upon receipt of any charge of discrimination, the supervisors involved shall immediately begin to document materials pertinent to the investigation. The Diversity Program Unit will provide assistance at any point if requested. All official Department responses to civil rights complaints will be submitted through the Diversity Program Unit.

The Diversity Program Unit will review responses and will send them to the Attorney General's Office for release. The Assistant Attorney General assigned to the Department will assume responsibility for the case and will notify the parties involved of when an official investigation will take place.

Process for Discrimination Complaints Inside DHS

When a complaint is filed "inside DHS," this means that there is no involvement with outside agencies, such as:

- ◆ Federal Civil Rights Commission
- ◆ Iowa Civil Rights Commission
- ◆ Equal Employment Opportunity Commission
- ◆ Other federal or state agency

Upon receipt of the complaint, the administrator, manager, or supervisor shall:

- ◆ Document the details of the incidents
- ◆ Date and sign the document
- ◆ Copy the complaint and forward it to the complainant's immediate supervisor and the diversity manager within five days. (If the complainant is alleging harassing or hostile conduct on the part of the complainant's supervisor, send a copy of the complaint to that supervisor's immediate superior.)

The DHS diversity manager will:

- ◆ Forward or retain copies of the complaint to be made available to:
 - The division administrator for the Division of Results-Based Accountability
 - The deputy director in the complainant's area
 - The division administrator in the complainant's area
 - Other relevant parties as appropriate
- ◆ Evaluate the complaint and reviews options:
 - Consult with others as needed
 - Assign others to complete an internal investigation
 - Conduct an investigation
 - Document findings
- ◆ Distribute findings or retain copies to be made available to:
 - The division administrator for the Division of Results-Based Accountability
 - The deputy director in the complainant's area
 - The division administrator in the complainant's area
 - The Department director's office
- ◆ Provide additional follow-up as needed.

Process for Complaints Registered Outside DHS

When a complaint is filed “outside DHS,” this means that the complainant has contacted:

- ◆ The Federal Civil Rights Commission, or
- ◆ The Iowa Civil Rights Commission, or
- ◆ The Equal Employment Opportunity Commission, or
- ◆ Another federal or state agency

Upon receipt of the complaint, the administrator, manager, or supervisor shall:

- ◆ Document the details of the incidents
- ◆ Date and sign the document
- ◆ Copy the complaint and forward it to the state’s Attorney General’s Office and the diversity manager within five days. (If the complainant is alleging harassing or hostile conduct on the part of the complainant’s supervisor, send a copy of the complaint to that supervisor’s immediate superior.)

The DHS Diversity Manager will:

- ◆ Consult with the Attorney General’s Office
- ◆ Forward or retain copies of the complaint to be made available to:
 - The division administrator for the Division of Results-Based Accountability
 - The deputy director in the complainant’s area
 - The division administrator in the complainant’s area
 - Other relevant parties as needed
- ◆ Evaluate the complaint in consultation with Attorney General’s Office and document findings.
- ◆ Distribute or retain copies of the findings to be made available to:
 - The division administrator for the Division of Results-Based Accountability
 - The deputy director in the complainant’s area
 - The division administrator in the complainant’s area
 - The Department director’s office
- ◆ Provide additional follow-up as needed.

ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Legal reference: Americans With Disabilities Act of 1990, as amended

The Americans With Disabilities Act of 1990 prohibits discrimination against persons with disabilities in all programs, activities, and services provided or made available by state and local governments, regardless of whether those entities receive federal assistance.

Interviewing Facilities

Hiring authorities shall ensure that special interviewing facilities are available and made known to persons with disabilities when the regular interviewing facilities are inaccessible to them.

Employment Conditions

Supervisors shall make reasonable accommodations to employment conditions whenever possible in order to hire or retain persons with disabilities. (See **Definitions: “Person with disability (handicapped).”**) Accommodations may consist of but are not limited to the following:

- ◆ Job restructuring;
- ◆ Work schedule modification;
- ◆ Acquisition or modification of equipment or devices;
- ◆ Providing readers, interpreters, or drivers;
- ◆ Physical restructuring within the work unit.

An applicant may be denied employment if:

- ◆ The applicant is unable to perform the essential job functions of the position applied for, and
- ◆ There is no reasonable accommodation that would enable the applicant to perform the responsibility.

If an accommodation would enable the applicant to perform the essential functions, the cost of the accommodation, the impact on the work unit, and the nature of any applicable aid or adaptive device must then be taken into consideration. (See **Definitions: “Essential job functions.”**)

If the applicant is unable to perform the essential job functions of the position applied for, the cost, impact on the work unit, and nature of any applicable aid or adaptive device must then be taken into consideration.

Reasonable accommodations may be requested and considered regarding positions with the Department. Meeting the essential job functions with or without an accommodation is a standard measure and condition for employment.

Determining Reasonability of Accommodations

Determine whether or not an accommodation is “reasonable” based on the following criteria:

- ◆ Cost
 - Structural modification expense
 - Purchase price of adaptive aids or special devices
 - Expense of hiring interpreters/signers or readers
- ◆ Impact on the work unit
 - Affect of work schedule modification on unit operations
 - Affect of physical layout restructuring on the work unit
 - Availability of other employees to assume new or different job duties as a result of job restructuring.
- ◆ Nature of the aid or adaptive device
 - Availability of the aid or device
 - Aids or devices which become hazardous in particular work environments.

If an employing unit determines that an accommodation for an applicant or an employee with a disability is not reasonable, the employing unit may contact the Diversity Program Unit before a final decision is made.

The purpose of this policy is to ensure that accommodations are not considered unreasonable inappropriately. If accommodations are to be made, contact the Diversity Program Unit only if there are concerns or questions. The diversity manager will provide technical assistance when requested.

Documentation of Accommodations

Whenever an applicant or an employee is denied an employment opportunity because a reasonable accommodation cannot be made for a person with a disability handicap, a memo documenting the action will be sent to the Diversity Program Unit.

Whenever accommodations are made for an applicant or an employee, documentation of the action shall be kept and made available to the Diversity Program Unit upon request.

The purpose of this policy is to have adequate information available in the event of an investigation or review as well as to identify patterns and problems.

Auditing and Reporting

The Diversity Program Unit shall keep and monitor information on employees with disabilities. Information shall be made available to the Employee Services Bureau upon request.



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES
KEVIN W. CONCANNON, DIRECTOR

August 26, 2003

GENERAL LETTER NO. 21-A-5

ISSUED BY: Bureau of Employee Services, Division of Results-Based Accountability

SUBJECT: Employees' Manual, Title 21, Chapter A, ***EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION***, Title page, revised; Contents (page 1), revised; pages 1 through 13, revised; and pages 14 and 15, new.

Summary

This letter transmits changes to the requirements for Affirmative Action committees.

Effective Date

Upon receipt

Material Superseded

Remove the entire Chapter A, from Employees' Manual, Title 21, and destroy it This includes:

| <u>Page</u> | <u>Date</u> |
|-----------------|-------------------|
| Title page | December 11, 1979 |
| Contents (p. 1) | October 9, 1984 |
| 1-4 | December 11, 1979 |
| 5-5b | June 17, 1980 |
| 6-10 | December 11, 1979 |
| 11 | October 9, 1984 |
| 12 | March 26, 1985 |
| 13 | October 9, 1984 |

Additional Information

Refer questions about this general letter to your service area manager.